

Appl. No 10/726,431
Amendment dated December 8, 2004
Reply to office action of October 1, 2004

Remarks/Arguments

In the office action, the Examiner noted in item 2 that Claim 19 is rejected under 35 U.S.C. 112 second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 19 step c is identified as indefinite as it refers to the heel of the hand on the ball, however, the claim fails to set forth the location of the ball in the device.

Claim 19 has been amended to specify the ball is placed on the tee-setting device operating knob attachment end. The preamble for claims 18 and 19 have also been amended to clarify the method makes use of the tee-setting device. Applicant respectfully submits that the amended claim 19 sets forth the subject matter that the applicant regards as the invention, and the amended claims particularly point out and distinctly define the metes and bounds of the subject matter that will be protected by the patent grant. Applicant respectfully submits that claim 19 as amended meets the requirements of 35 U.S.C. 112 second paragraph.

In item 4, the examiner noted that claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Bressie (4,660,837).

Regarding claim 1, the applicant respectfully submits that the subject matter claimed therein patentably distinguishes over Bressie (4,660,837). Claim 1 is written in means plus function form to meet the requirements of U.S.C. 112, paragraph 6. The claim therefore is construed to cover the corresponding structure, material or acts described by the specification and equivalents thereof. The following describes the patentable differences between applicant's invention and the Bressie device regarding the means for retaining the golf tee in the device, the means for selecting a golf tee head height above the ground for the golf tee to be inserted, the means for release of the golf tee from the device, .

The Bressie means for retaining the golf tee in the device is described in Bressie as follows, "For the purpose of releasably retaining a tee, recess 36 includes uniformly spaced internally projecting wedge-shaped posts 40, 42, the latter of which also include outward rectangular posts 44 for cooperation with slots 28 in a manner as will be understood. Each wedge-shape interface of the posts 40, 42 is slightly tapered inwardly in an axial direction from chamfer 38 until merging with the inside face of cap 46." (Bressie column 3, lines 49-57) "With a golf tee 26 inserted into recess 36 the tee head is frictionally gripped by the wedge faces of posts 40 and 42." (Bressie column 4, lines 27-29) "After tee penetration has been completed, ball 18 and body 12 are lifted upwardly by placing fingers under table 20 to remove the apparatus while tee 26 remains in place. By virtue of the ground friction imposed on the shank of tee 26, it readily detaches from the apparatus 10 as the latter is being removed and remains at the height setting determined by the preadjusted setting of plunger 24." (Bressie column 4, lines 56-60)

The Bressie design therefore is to force the head of the golf tee into contact with the wedge faces of posts 40 and 42. This action requires either locally deforming the golf tee head or deforming the posts. Removal of the tee similarly requires this deformation.

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Applicant's device in all its embodiments (see paragraphs [000151], [000162], [000166]) provides a movable set of ball bearings to grip the golf tee head. The force holding these ball bearings in contact with the golf tee head is released to provide for insertion or removal of the golf tee and then reapplied to retain the golf tee in the device. The applicant's device therefore is structurally and patentably novel from the Bressie device in the means for retaining a golf tee head in the device.

The Bressie design means for selecting a golf tee head height above the ground for the golf tee to be inserted is described in Bressie as follows, "By a squeezing action imposed on button faces 54 when is the relation illustrated in FIG. 3, the entire plunger 24 can be conveniently displaced up or down within body 12 relative to base plane 15 of skirt 14. In the course of displacing plunger 34 post 44 and web 60 are slidably moved and guided within slots 28 and at such time as the desired setting has been arrived at, buttons 52 can be released so as to allow an interlock relation to be incurred between protrusion 56 and the aperture 30 thereat in the manner illustrated in FIG. 2." (Bressie column 4, lines 29-39).

The Bressie design therefore is a structure providing a series of fixed tee head heights at the locations determined by the apertures located along the length of the body of the device. In Bressie figure 1 it appears there are nine possible heights.

Applicant's invention in all its embodiments provides a wide range of predetermined tee head heights. The adjustable embodiments of the applicant's invention (see paragraphs [000152] through [000156], and [000163] through [000164]) provide for a large number of possible tee head heights by providing a helical groove with a corrugated surface (413a in Fig. 4, 3a in Fig. 8 and Fig. 12) in the appropriate structure that provides an adjustment with a large number of positions by turning one portion of the device relative to the helical groove. The applicant's invention with the helical groove is therefore structurally and patentably novel from Bessie in regards to the means for selecting a golf tee head height above the ground for the golf tee to be inserted.

The non-adjustable embodiment of the applicant's device provides an infinite number of predetermined height adjustments by varying the thickness of the removable base (see paragraph [000157]). This embodiment is also structurally and patentably novel compared to the Bessie device in regards to the means for selecting a golf tee head height above the ground for the golf tee to be inserted.

The Bressie means for release of the golf tee from the device is described previously as the same as the means for retention of the golf tee in the device. Applicant's device in all its embodiments (see paragraphs [000151], [000162], [000166]) provides a movable set of ball bearings to grip the golf tee head. The force holding these ball bearings in contact with the golf tee head is released to provide for insertion or removal of the golf tee and then reapplied to retain the golf tee in the device. The applicant's device therefore is structurally and patentably novel from the Bressie device in the means for release of the golf tee from the device.

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The applicant's invention has been shown to be structurally and patentably distinct from the Bressie device in multiple manners. The rejection of claim 1 is therefore respectfully requested to be withdrawn.

Regarding claim 2, this claim is a dependant claim on claim 1 reciting additional limitations on claim 1. Since claim 1 has been shown to be patentably distinct from the Bessie patent, claim 2 is also patentably distinct. The rejection of claim 2 is therefore respectfully requested to be withdrawn.

In item 5, the examiner rejects claims 18 and 19 under 35 U.S.C. 102(b) as being anticipated by Lynch (3,312,468).

Regarding amended claim 18, the applicant respectfully submits that the subject matter claimed therein patentably distinguishes over Lynch (3,312,468). Claim 18 is a process claim that has been amended to more clearly describe the process of tee setting with the applicant's invention. The Lynch device will not perform the method claimed and therefore the amended claim is not anticipated by Lynch. The following describes the differences between the applicant's invention and the Lynch device which prevent the Lynch device from performing the method claimed.

The Lynch device relies on the user's visual estimate of the height of the tee head above the ground to determine the need for adjustment of tee height (Lynch column 2, lines 27-32). This is done by requiring the user to "manipulate the tee setting device to raise the ball to the desired level..." This is an activity of visual adjustment performed after insertion of the tee in the Lynch device and setting of the tee into the ground, as described in the reference sentences. There is no adjustment structure on the Lynch tee-setting device, nor is the tee inserted into the ground a consistent distance. The Lynch device therefore has no method of **"setting the tee-setting device adjustment to the desired tee head height above the ground"** (emphasis added) and is not capable of **"inserting the golf tee into the ground using downward force applied between by 2 fingers and the heel of the hand until the device tee insertion end touches the ground"** (emphasis added) and therefore does not anticipate the applicant's invention. Since Lynch does not anticipate applicants invention, the rejection of claim 18 is respectfully requested to be withdrawn.

Regarding amended claim 19 the applicant respectfully submits that the subject matter claimed therein patentably distinguishes over Lynch (3,312,468). Claim 19 is a dependant claim on claim 18 reciting additional limitations on claim 18. The claim was amended to reflect the amendments to claim 18. Since claim 18 is patentably distinct from the Lynch patent as previously shown, claim 19 is also patentably distinct. The rejection of claim 19 is therefore respectfully requested to be withdrawn.

In item 7 the examiner rejects claims 1 and 2 under 35 U.S.C. 103(a) as being unpatentable over Murdock Jr. (3,671,037) in view of Bressie (4,660,837).

Regarding claim 1, the applicant respectfully submits that the subject matter claimed therein patentably distinguishes over Murdock Jr. (3,671,037) in view of Bressie (4,660,837). Claim 1 is

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written in means plus function form to meet the requirements of U.S.C. 112, paragraph 6. The claim therefore is construed to cover the corresponding structure, material or acts described by the specification and equivalents thereof. The following describes the patentable differences between applicant's invention and the Murdock Jr. device. The applicant's invention has previously been shown to be patentably distinct from the Bressie device in connection with claims 1 and 2, see item 4, above.

The Murdock device means for inserting a golf tee in the device is a dovetail groove cut in a body portion partially through the body such that a golf tee head may be slid into the groove and retained by the angle of the groove. The applicant's invention provides an opening on the bottom of the invention through which the golf tee is inserted. The applicant's invention therefore is structurally and patentably novel from the Murdock device regarding the means for inserting a golf tee in the device.

The Murdock device has two embodiments for means for retaining the golf tee in the device. One is a dovetail groove cut in a body portion partially through the body such that a golf tee head may be slid into the groove and retained by the angle of the groove. (Column 2, lines 49-56) The second is a split body with one portion pivotally affixed to the second portion. (column 3, lines 24-29) The body contains a dovetail groove that is on the split line so the groove opens when the two body portions are pivoted apart, allowing insertion of a golf tee (FIG. 3).

Applicant's invention in all its embodiments (see paragraphs [000151], [000162], [000166]) provides a movable set of ball bearings to grip the golf tee head. The force holding these ball bearings in contact with the golf tee head is released to provide for insertion or removal of the golf tee and then reapplied to retain the golf tee in the device. The applicant's invention therefore is structurally and patentably novel from the Murdock device in the means for retaining a golf tee head in the device.

The means for release of a golf tee from the device by the Murdock patent is by sliding the device in the direction of the end of the dovetail groove in the case of the first embodiment, and by pivoting the body portions apart in the case of the second embodiment. Applicant's invention provides a movable set of ball bearings to grip the golf tee head. The force holding these ball bearings in contact with the golf tee head is released to provide for removal of the golf tee. Applicant's invention is therefore structurally and patentably novel from the Murdock device in the means for releasing a golf tee head from the device as previously shown.

The means for selecting a tee head height above the ground by the Murdock patent is by a pair of gauge members (18, 20 in FIG. 1 and 2) secured by a pair of wing screws (50, 52). The adjustable embodiments of the applicant's invention (see paragraphs [000152] through [000156], and [000163] through [000164]) provide a helical groove with a corrugated surface (413a in Fig. 4, 3a in Fig. 8 and Fig. 12) in the appropriate structure that provides an adjustment with a large number of positions by turning one portion of the device relative to the helical groove. The applicant's device with the helical groove is therefore structurally and patentably novel from Murdock in regard to the means for selecting a tee head height above the ground.

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The non-adjustable embodiment of the applicant's invention provides an infinite number of predetermined height adjustments by varying the thickness of the removable base (see paragraph [000157]). This embodiment is also structurally and patentably novel compared to the Murdock device in regards to the means for selecting a tee head height above the ground.

The Murdock patent does not teach or suggest applicant's invention means for inserting a golf tee in the device, means for retaining the golf tee in the device, means for release of a golf tee from the device, nor means for selecting a tee head height above the ground. The Bressie patent does not teach or suggest applicant's invention means for retaining the golf tee in the device, means for selecting a golf tee head height above the ground, nor means for release of the golf tee from the device, as described previously. There can be no prima facie case of obviousness if the references cited do not suggest or teach all limitations of the claim.

Regarding claim 2, this claim is a dependant claim on claim 1 reciting additional limitations on claim 1. Since claim 1 is patentably distinct from the Murdock and Bessie patents, claim 2 is also patentably distinct. The rejection of claims 1 and 2 is respectfully requested to be withdrawn.

Regarding the objection to claims 3-9 noted on the Office Action Summary, claims 1 and 2 are shown to be patentably distinct from the prior art and the rejection of these claims is respectfully requested to be withdrawn. Since claims 3-9 are therefore dependent on an allowable claim the objection is respectfully requested to be withdrawn.

Applicant respectfully submits that the claims as revised satisfy all the examiners objections. The applicant's invention as claimed is patentably distinct from the prior art as has been shown. The applicant submits the application is in condition for allowance, and that action is earnestly solicited.

Respectfully submitted,



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